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Fair Pay and Fair Contracting: Maine's Prevailing Wage Laws

Roads, schools, bridges, government buildings, public hospitals – these are all examples of public works projects. Most states in the U.S., following the lead of the federal government, require that workers in such construction projects must be paid the “prevailing wage” for their occupation, industry and local geographic area. There is substantial research showing that prevailing wage (P.W.) laws can be an important element of economic development and economic stimulus plans, benefiting states, communities, businesses, workers and taxpayers in several ways. Prevailing wage laws:

- ✚ can benefit communities, states and taxpayers by helping to ensure the most reliable, productive and experienced workforce, and by encouraging apprenticeship training;
- ✚ are a form of economic development which benefits states, businesses, workers and communities through higher wages, benefits for workers, and use of local contractors;
- ✚ result in a safer workplace and lower rates of occupational injuries, hence benefiting communities, employers, contractors, and workers;
- ✚ can help to establish a more even “playing field” and promote fair competition, which benefits local contractors, workers and communities.

However, there are continued criticisms of prevailing wage laws by some who feel that this will increase costs to taxpayers unnecessarily. In the current economic context of restricted funding and belt-tightening, why should states such as Maine retain or strengthen their prevailing wage laws? This briefing paper provides an overview of the prevailing wage question, including the nature, history and purpose of prevailing wage laws in Maine and the U.S., and a discussion of their potential costs, benefits and impacts.

What are prevailing wage laws?

Prevailing wage requirements are laws at both the state and federal levels, regulating the wages and benefits paid to workers in public works construction projects. Such laws require that workers in public works projects be paid the level of wages and benefits which are customary for each occupation in a specific geographic area and industry. A good description of the prevailing wage can be found here:

For over a hundred years, many state and local governments have required that companies that want to contract for public works must pay their workers a wage that reflects wages commonly received in the area. The federal government adopted its own prevailing wage requirement with the Davis-Bacon Act of 1931. At the heart of these laws is the conviction that government, as a major buyer in the construction sector, should not act to drive down wages. Indeed, the civic-minded reformers who initially pushed for prevailing wage laws believed that the government ought to use its buying power to enhance the welfare of workers and their families.¹ [*Emphasis added*]

The primary federal law governing wages and benefits for federal public works projects is the Davis-Bacon Act. In addition, 32 states, plus the District of Columbia, currently have state-level prevailing wage laws which apply to a range of public works construction projects.² In some states, this includes the construction of public schools, but in other states, including Maine, school construction is not included.

Maine law defines “prevailing wage and benefits” as “the hourly wage and benefits paid to the median number of workers employed in a trade or occupation on the 2nd and 3rd week in September.” The law also refers to “fair minimum wage and benefits,” which is defined as the prevailing wages and benefits (as determined by the Director of the Maine Bureau of Labor Standards).³

¹ Nooshin Mahalia, “Prevailing Wages and Government Contracting Costs: A Review of the Research.” EPI Briefing Paper #215, Employment Policy Institute, July 8, 2008, p. 1. <http://www.epi.org/content.cfm/bp215>

² Mahalia, *ibid.*, p. 3.

³ *Maine Revised Statutes*, Title 26: “Labor and Industry,” Chapter 15. Preference to Maine Works and Contractors; Sect. 1304: Definitions; #5 & #9; www.mainelegislature.org/legis/statutes/26/title26sec1304.html

What does the federal Davis-Bacon Act cover?

The Davis-Bacon Act, as amended in 1935, requires that workers who are employed in federally funded construction projects with contracts over \$2,000 should be paid “a minimum wage that the United States Department of Labor (USDOL) determines to be prevailing for corresponding classes of workers (such as plumber, electrician, carpenter, and the like) in the civil subdivision where the contract is to be performed.”⁴

What kinds of projects are included under Maine’s prevailing wage law?

Maine’s law applies to various construction projects contracted with the state for \$50,000 or more, and similar contract work performed for state “public authorities” such as the Maine Turnpike Authority.⁵

How are Maine’s prevailing wages determined?

The Maine Bureau of Labor Standards is required to conduct an annual survey of wages and benefits paid to a number of construction-related trades and occupations in various localities throughout the state, during the second and third weeks of September. There must be at least ten workers in each trade or occupational category within the state, in order for a prevailing wage and benefit level to be established.⁶ The surveys are the basis for establishing prevailing wages and benefits for four different categories of construction, for each county in the state.⁷

The wage levels displayed on the state’s websites are only general wage guides. Bidders and contractors for state public works construction projects must contact the Bureau of Labor Standards to obtain official project-specific wage determinations for their projects. Workers, business owners and contractors can obtain current information on various rules regarding prevailing wage determination from the Bureau of Labor Standards website publication, “Rules Relating to Fair Minimum Wage in Construction.”⁸

How is the prevailing wage law enforced?

Contractors in public works projects can be fined for violating the prevailing wage law. The law states:

The hourly wage and benefit rate paid to laborers employed in the construction of public works, including state highways, may not be less than the fair minimum rate as determined in accordance with section 1308. Any contractor who knowingly and willfully violates this section is subject to a fine of not less than \$250 per employee violation. Each day that any contractor employs a laborer at less than the wage and benefit minimum stipulated in this section constitutes a separate violation of this section.⁹ [*Emphasis added*]

Contractors and subcontractors on a project must clearly post the wage determinations for their project in a central place, or else must provide copies of the project wage determinations to all workers. Anyone

The specific methods of wage determination are described in Section 1306 of this statute.

⁴ Elizabeth Dominic, Virginia McInerney, and the Legislative Service Commission Staff. “Prevailing Wage Laws”, in *Members Only: An Informational Brief Prepared for Members of the Ohio General Assembly*, Vol. 126: Issue 2. Ohio General Assembly, February 25, 2005, p. 2. www.lsc.state.oh.us/membersonly/126prevailingwagelaws.pdf

⁵ “Public works” are defined to include “all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports and all other structures upon which construction may be let to contract by the State and which contract amounts to \$50,000 or more.” Maine Revised Statutes, *ibid*; Definitions; #8.

⁶ Current information on wage rates and other related information can be found at the Bureau of Labor Standards website on prevailing wages: http://www.maine.gov/labor/labor_stats/publications/wageconst/

⁷ Prevailing wage rates are “developed for four types of construction: building 1 (one or two family homes), building 2 (buildings other than one or two family homes), highway and earthwork, and heavy and bridge.” Ruth A. Ladd, Report on Maine Construction Wage Rates 2003/2004, Maine Department of Labor, Bureau of Labor Standards, Wage and Hour Division, April, 2004, p. 1. This report, although last issued in its complete form in 2003/2004, is still largely up to date, apart from updated wage rates and the switch from SIC to NAICS industrial categories, according to Barbara Chenoweth, Bureau of Labor Standards (personal conversation, 10/28/08). www.maine.gov/labor/labor_stats/publications/constructionwagerept/constructionwage03-04.pdf

⁸ “Rules Relating to Fair Minimum Wage in Construction,” Maine DOL, Bureau of Labor Standards, link at: http://www.maine.gov/labor/labor_laws/wagehour.html

⁹ *Maine Revised Statutes, ibid*; Section 1303: “Public works; minimum wage and benefits.” <http://www.mainelegislature.org/legis/Statutes/26/title26sec1303.html>

may report a suspected violation of the prevailing wage law to the Maine Bureau of Labor Standards.¹⁰

Maine's penalties for employers who violate the Prevailing Wage law are considerably weaker than in a number of the 32 prevailing wage states.¹¹ In many states, contractors or employers can be penalized with substantial fines and/or imprisonment for such violations, and they can be barred from future bids on projects for a length of time. Some states also have stiff sanctions for falsifying reports by employers.¹²

Do prevailing wages add to the costs of public construction projects?

Many opponents of prevailing wage laws say that such laws will result in far higher costs of public construction projects. Some studies have supported this position, often based on hypothetical models of project costs. However, much other research shows that construction done in states with prevailing wage laws is not any more expensive than in states without such laws. An analysis by the Economic Policy Institute points out that many of the studies showing increased costs use a flawed analysis based on certain theoretical assumptions and projections, rather than on empirical data.¹³ Other studies based on time-series analysis, which compare actual costs of public works projects in states before and after prevailing wage regulations, have shown that generally prevailing wage laws do not increase construction costs.¹⁴

What are the positive consequences of having state prevailing wage laws?

Research studies have shown many benefits from effective and strongly enforced prevailing wage laws:

✚ Ensuring a better trained and more productive workforce, by attracting more experienced workers, and by encouraging “training, capital investment and better labor management practices.”¹⁵ For example, economist Peter Philips states that “construction workers in prevailing wage states produce 13% to 15% more value added to their work compared to workers in states without prevailing wage laws.”¹⁶

In his study of prevailing wages in Iowa and other states, Philips also emphasizes that union-based apprenticeship training programs are strengthened and encouraged by prevailing wage laws. For example, in Iowa, “on average, jointly run, union-management apprenticeship programs account for almost 70% of all construction apprentices trained in the state.”¹⁷ He adds:

In the ... prevailing wage states, there is a higher rate of apprenticeship training in construction, and those who enter apprenticeship training are more likely to complete their programs.

Prevailing wage laws encourage apprenticeship training by requiring that contractors who bid on public works include in the cost of their bid funds for training. ... Without prevailing wage requirements, nonunion contractors may cut their bids by jettisoning training costs.¹⁸

✚ Contributing to economic development and economic stimulus plans: Peter Philips and other analysts argue that prevailing wage laws result in stronger, more vital economies for states and localities, higher incomes and benefits for workers, more local spending which benefits local businesses, and increased state revenues. Research also suggests that states which repeal their prevailing wage laws may suffer major economic losses. For example, one study estimated that the proposed repeal of Missouri's prevailing wage law would cost state residents from \$294 to \$356 million annually in lost income, in

¹⁰ For more information or to report violations of any ME wage laws, contact the Maine Dept. of Labor, Wage and Hour Division, 54 State House Station, Augusta, ME 04333-0054. Phone: (207) 623-7900, TTY: (207) 1-800-794-1110. Email: mdol@maine.gov

¹¹ National Alliance for Fair Contracting, Inc. <http://www.faircontracting.org/NAFCnewsite/prevlawquestions/prevwagestates.htm>

¹² *Ibid.* In Oregon, the state “may assess a civil penalty not to exceed \$5,000 for each violation” of the prevailing wage law, in addition to other penalties. Violators can face prison in states such as Rhode Island, Missouri, Minnesota, and Pennsylvania.

¹³ Nooshin Mahalia, *ibid.*; p. 2.

¹⁴ *Ibid.*; p. 8.

¹⁵ Peter Philips, Ph.D. “Quality Construction – Strong Communities: The Effect of Prevailing Wage Regulation on the Construction Industry in Iowa.” SMACNA, 2006, p. 15. www.smacna.org/legislative/index.cfm?fuseaction=studies

¹⁶ *Ibid.*, p. 3.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

addition to millions of dollars lost in state revenues.¹⁹ In a similar analysis, researchers Belman and Voos concluded that a repeal of the state's prevailing wage law would "cost the State of Wisconsin more in lost tax revenues than it would save in reduced construction costs."²⁰

✚ Facilitating occupational safety: Studies show that occupational fatality rates in construction are lower in states with prevailing wage laws, and lower still in states where these laws are strongly enforced.²¹ Azari-Rad and his colleagues also found that states with prevailing wage laws had lower rates of occupational injuries, which they attribute to better trained and more highly skilled workers.²² The Economic Policy Institute concludes that occupational injury rates are lower in prevailing wage states because "the regulation encourages training and retention of experienced workers."²³

✚ Promoting fair competition among contractors: Prevailing wage supporters point out that having such laws protects against cutthroat competition by unsavory contractors who could otherwise underbid established local businesses, by cutting corners and using unskilled labor.²⁴ Without prevailing wage laws, "predatory contractors" may secure contracts "by using unskilled or low-skilled workers imported from other parts of the country who are willing to work for less than the local labor market is paying."²⁵

Steps that Maine can take to improve or strengthen its prevailing wage law include:

✚ Adding public school construction, and other county or municipal construction projects using public funding, to Maine's definition of "public works." Any public sector entity receiving state or federal financial aid as part of their public works project should be required to adhere to the state's prevailing wage laws. Since these projects are clearly publicly funded, and are consistent with the general definition of public works, it is certainly logical to include the same wage protections as in other public construction.

✚ Requiring training and apprenticeship programs: Unlike many states, Maine does not yet have training or apprenticeship requirements for public works contracts. Adding such a requirement (or a preference) would be an investment fostering a better educated, safer and more highly skilled workforce.

✚ Improving prevailing wage data: Although Maine is legally required to conduct annual surveys of occupational wages, such data collection projects can be improved with adequate funding and staffing levels to ensure more consistent, updated and complete wage data. Similarly, the U.S. government should be required to update the prevailing wage rates for the federal Davis-Bacon law more regularly.

✚ Strengthening enforcement of existing prevailing wage laws: As with any set of laws, legal statutes are only effective if they are properly enforced. It is critical to have adequate staffing and funding at both the state and federal levels, to ensure proper enforcement of prevailing wage laws in Maine and the U.S.

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¹⁹ For example, Missouri could lose \$17.7 to \$21.4 million annually from lost income taxes, and \$5.7 to \$6.9 million annually in lost sales tax collections. Michael P. Kelsay, L.K. Randall Wray, and Kelly D. Pinkham. "The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri." Dept. of Economics, University of Missouri – Kansas City, January, 2004, p. 3.

²⁰ Dale Belman and Paula B. Voos. "Prevailing Wage Laws in Construction: the Cost of Repeal to Wisconsin." 1995, p. 15. Link to PDF at: <http://www.faircontracting.org/NAFCnewsite/prevwage.htm>

²¹ Philips, 2006, p. 3.

²² Hamid Azari-Rad, Peter Philips, & Mark Prus. *The Economics of Prevailing Wage Laws*. Burlington, VT: Ashgate; 2005; p. 21-22.

²³ Nooshin Mahalia, *ibid.*, p. 9.

²⁴ "Prevailing Wage Laws." *Members Only*, *ibid.*, pp. 9-10.

²⁵ Professor Daniel H. Kruger. "Why Keep Michigan's Prevailing Wage." School of Labor and Industrial Relations, Michigan State University; p. 1. www.prevailingwage.org/whyPM.html